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REPORT AND RECOMMENDATIONS MADE BY THE PANEL OF COMMISSIONERS CONCERNING THE FIFTH INSTALMENT OF "E4" CLAIMS

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Introduction

1. At its thirtieth session, held on 14-16 December 1998, the Governing Council of the United Nations Compensation Commission (the "Commission") appointed Messrs. Luiz Olavo Baptista ("Chairman"), Jean Naudet, and Jianxi Wang as the second Panel of Commissioners (the "Panel") charged with reviewing category "E4" claims. The category "E4" population consists of claims submitted by Kuwaiti entities, other than oil sector and environmental claims, eligible to file claims under the Commission's "Claim Forms for Corporations and Other Entities" ("Form E").

2. The fifth instalment of 23 "E4" claims was submitted to the Panel on 13 January 1999, in accordance with article 32 of the Provisional Rules for Claims Procedure (S/AC.26/1992/10) (the "Rules").

3. Pursuant to article 38 of the Rules, this report contains the Panel's recommendations to the Governing Council concerning the fifth instalment claims.

I. OVERVIEW OF THE FIFTH INSTALMENT CLAIMS

4. The fifth instalment claims were selected from among the population of approximately 2,750 "E4" claims on the basis of criteria that include, inter alia, the size, volume and complexity of the claim, and the legal, factual, and valuation issues raised by the claim. Most of the fifth instalment claimants traded in vehicles or vehicle-related accessories and spare parts.

5. The fifth instalment claimants allege losses aggregating Kuwaiti dinars ("KD")372,731,813 (approximately US$1,289,729,457). The claimants also assert claims for interest aggregating KD 11,935,944 (approximately US$41,300,844) and claim preparation costs aggregating KD 216,784 (approximately US$750,118). The claims range between KD 3,082,423 and KD 145,007,854 (i.e., between approximately US$10,665,824 and US$501,757,280) in value.

6. The fifth instalment claims are classified as "unusually large or complex". In other words, the amount claimed by each claimant is equal to or more than KD 3 million (approximately US$10 million), and, due to the nature of the legal and factual issues raised in the claim and the amount of documentation provided in support of the claimed loss, the Panel's verification and valuation of the claim has been completed within 360 days.

7. All of the claimants in the fifth instalment operated in Kuwait prior to Iraq's invasion and occupation of Kuwait. In addition, some of the claimants were also doing business outside Kuwait.

8. Claimants in this instalment have sought compensation under all loss categories identified on Form E except two: loss of business transaction or course of dealing and loss of income-producing property. The two most

common losses asserted in this instalment are loss of tangible property (mainly vehicles, vehicles spare parts and accessories) and loss of earnings or profits. Fifth instalment claimants also submitted claims for uncollectible receivables, restart costs, interest, claim preparation costs and other losses.

II. THE PROCEEDINGS

9. Before the fifth instalment claims were submitted to the Panel, the secretariat undertook a complete review of these claims in accordance with the Rules. The secretariat first carried out a preliminary assessment of the claims, pursuant to article 14 of the Rules, to verify whether the claims met the formal requirements of articles 14(1) and 14(2). For example, the claims were reviewed to ascertain whether they included proof of incorporation or organization under the laws of Kuwait on the date the claim arose, and contained an affirmation by the authorized official for each claimant that the information contained in the claim is correct. The results of this formal review were entered into a centralized database maintained by the secretariat (the "Claims Database").

10. One claim presented a formal deficiency and the secretariat issued a notification to this claimant pursuant to article 15 of the Rules. The deficiency was corrected by the claimant.

11. A substantive review of the fifth instalment claims was undertaken to identify significant legal, factual and valuation issues. The results of the review, including the significant issues identified, were recorded in the Claims Database.

12. The Executive Secretary of the Commission submitted reports 24 and 25 dated 8 July 1998 and 13 October 1998, respectively to the Governing Council in accordance with article 16 of the Rules. These reports covered, inter alia, the fifth instalment of "E4" claims and presented significant legal and factual issues identified in these claims. Governments, including the Government of Iraq, submitted additional information and views in response to the Executive Secretary's article 16 reports.

13. Accordingly, at the conclusion of the (i) preliminary assessment; (ii) substantive review; and (iii) article 16 reporting, the following documents had been made available to the Panel for consideration:

(a) the claim documents submitted by the claimants;

(b) the preliminary assessment reports prepared under article 14 of the Rules;

(c) the claim summaries and reports;

(d) information and views of governments, including the Government of Iraq, received in response to the article 16 reports; and

(e) other information, such as legal briefing notes, deemed, under article 32 of the Rules, to be useful to the Panel for its work.

14. The number of claims before the Panel in this instalment and the volume and nature of evidence presented in these claims necessitated the use of expert consultants in accordance with article 36(b) of the Rules. The Panel retained the services of an accounting firm and a loss adjusting firm, selected by a competitive bidding process in accordance with applicable United Nations rules.

15. The Panel directed the expert consultants to review each claim in accordance with the verification and valuation methodology developed by the first "E4" Panel and to submit to the Panel a detailed report for each claim summarizing the expert consultants' findings. The verification and valuation methodology is discussed in the "Report and recommendations made by the Panel of Commissioners concerning the first instalment of 'E4' claims" (S/AC.26/1999/4) (the "First 'E4' Report"). The methodology used by the Panel in the First "E4" Report is not restated in this report. Instead, this report makes reference to the First "E4" Report. As with the First "E4" Report, the Panel's treatment of certain claims is highlighted in the body of the report.

16. Pursuant to article 34 of the Rules, specific interrogatories were transmitted to each claimant requesting additional information in order to assist the Panel in its review of the claims. All such letters were directed through the Public Authority for Assessment of Compensation for Damages Resulting from Iraqi Aggression ("PAAC"). The type of information required varied depending on the evidentiary shortcomings encountered for each claimant.

17. By its first procedural order dated 15 January 1999, the Panel gave notice of its intention to complete its review of the fifth instalment claims and submit its report and recommendations to the Governing Council within 360 days of 13 January 1999. The Panel's first procedural order was transmitted to the Government of Iraq and the Government of Kuwait on 15 January 1999.

18. The Panel transmitted to the Government of Iraq for its review and comment five claims that satisfied the following criteria:

(a) the total claimed value was equal to or greater than KD 30 million (approximately US$104 million); or

(b) the claim involved elements relating to contracts or dealings with Iraqi entities.

19. By its second procedural order dated 22 January 1999, the Panel directed the transmittal to the Government of Iraq of the statement of claim and other supporting documents filed by the five claimants that satisfied the above criteria from the fifth instalment. The Panel invited

the Government of Iraq to submit its response to these claims within 180 days of the date of the procedural order. Iraq's response was received on 21 July 1999 and was reviewed and considered by the Panel.

20. During the period 5-11 April 1999, at the direction of the Panel, five members of the secretariat and two expert accounting and loss adjusting consultants travelled to Kuwait to meet with seventeen of the fifth instalment claimants to obtain information for the Panel's review of these claims (the "Mission"). The delegation carried out on-site inspections of some of these claimants' premises, offices, showrooms and warehouses. During meetings with the claimants, the delegation received several of the documents that had been requested through PAAC prior to the Mission. Additional documents and explanations were also requested by the delegation during the meetings. The delegation also met with representatives of the Kuwait Chamber of Commerce and Industry to discuss commercial practices in Kuwait before and after Iraq's invasion and occupation of Kuwait.

21. An additional level of verification was performed to determine if related claimants filed duplicate claims. This review is described in paragraph 18 of the "Report and recommendations made by the Panel of Commissioners concerning the fourth instalment of 'E4' claims" (S/AC.26/1999/18) (the "Fourth 'E4' Report").

22. With regard to copies of the claimants' audited financial statements or accounts ("accounts"), in addition to the specific information requested pursuant to article 34 of the Rules (see para. 16, supra), PAAC was notified of all claimants that had not provided accounts for the three fiscal years prior to and following Iraq's invasion and occupation of Kuwait. This notification was sent to PAAC on 20 April 1998. The second notice was sent on 20 November 1998, listing claimants that had not provided any supplemental accounts. The third notice pertaining to fifth instalment claims was sent on 21 January 1999 with regard to claimants that had not submitted accounts for 1987.

23. Further, general requests for additional information were made concerning the loss of vehicles, uncollectible receivables, loss of contract, cancelled Kuwaiti dinar notes, and the cost of returning employees to Kuwait. These requests were described in paragraphs 20-24 respectively of the Fourth "E4" Report.

24. With respect to claims for the loss of goods in transit, in addition to the specific information requested pursuant to article 34 of the Rules (see para. 16, supra), the "E4" claimants were asked on 24 June 1999 to provide proof of payment for the goods shipped, in addition to Kuwaiti Port Authority documents demonstrating that the goods were actually received in Kuwait. (See para. 61, infra.) On 2 August 1999, PAAC replied requesting the identification of the specific claimants from whom this information was currently needed. On 13 August 1999 PAAC was provided with the names of claimants who were required to provide such information.

25. Based on its review of the documents submitted, including documents and clarifications received in response to the second procedural order, the Panel concluded that the issues presented by the fifth instalment claims had been adequately developed and that oral proceedings to further explore such issues were not required.

III. LEGAL FRAMEWORK

26. The legal framework for the evaluation of the claims in this instalment is the same as that used in earlier "E4" instalments. The Second and Fourth "E4" Reports discuss additional issues that were encountered in those instalments of "E4" claims. These various elements of the Panel's review are not restated in this report. Instead, this report makes reference to sections in the previous "E4" reports where such issues have been addressed.

IV. VERIFICATION AND VALUATION OF CLAIMS

27. In the limited instances where the Panel encountered new issues not addressed in prior "E4" reports, the Panel developed methodologies for verifying and valuing the losses. These new issues are highlighted in the text of this report. The Panel's specific recommendations on the losses asserted in this instalment and the reasons therefor are set out in the annexes to this report.

28. Before discussing the Panel's specific recommendations for compensating the fifth instalment claims, it is important to restate that the Panel's approach to the verification and valuation of these claims balances the claimant's inability to always provide the best evidence against the "risk of overstatement" associated with such evidentiary shortcomings. The term "risk of overstatement", as defined at paragraph 34 of the First "E4" Report, is used to refer to cases in which claims contain evidentiary shortcomings that prevent their precise quantification and therefore present a risk that they might be overstated.

V. THE CLAIMS

29. The Panel reviewed the fifth instalment claims according to the nature and type of loss identified. Accordingly, the Panel's recommendations have been set out below by loss type. Reclassified losses have been dealt with in the section pertaining to the loss category into which the Panel reclassified the losses.

A. Contract

30. Four claimants in this instalment asserted claims aggregating KD 1,142,581 (approximately US$3,953,567) for loss of contract.

1. Compensability

31. The Panel determines whether a contract claim is compensable by evaluating the loss under the appropriate review methodology. Thus, amounts billed under a contract but not received are reviewed as receivables. Profits that would have accrued from goods or services to be provided over the remainder of a terminated or repudiated contract are reviewed as loss of profits. (See the First "E4" Report, para. 66.)

2. Verification and valuation method

32. The verification and valuation method used by the Panel is the same as that used in the first instalment. (See the First "E4" Report, paras. 77-84.)

3. Evidence submitted

33. On 22 October 1998, additional information was requested from the claimants concerning their contract losses. The claimants with loss of contract claims were asked to provide evidence that the contract had been repudiated or cancelled unless they had already provided this information. The claimants were instructed that the required declaration should include the specific circumstances of such repudiation or cancellation including, but not limited to, the date that such event occurred. Claimants that were unable to provide this evidence were asked to explain why.

34. Arabian Motors Group Co. seeks compensation for the cost of repairs performed on clients' vehicles that were not completed before the invasion. The claimant provided a general ledger page reflecting the value of the work in progress for the claimed amount. However, the claimant failed to provide work orders or sufficient evidence of contractual agreements. As a result, the Panel recommends disallowing the claim because this evidence was not provided.

35. The Panel's recommendations with respect to contract losses are set out in annex II.

B. Real property

36. Sixteen claimants in this instalment asserted claims aggregating KD 9,597,421 (approximately US$33,209,069) for loss of real property.

1. Compensability

37. These claims relate to damage to various freehold and leasehold premises in Kuwait. The compensability standards are the same as those used in the first instalment. (See the First "E4" Report, paras. 89-91.) As was the case in the first instalment of "E4" claims, most claimants established the fact and nature of damage to their buildings and facilities

by providing copies of witness statements, survey reports and photographs. As in the first instalment of "E4" claims, the nature of damage alleged and the location of all the properties in Kuwait established that the damage was a result of military operations and the breakdown of civil order in Kuwait during Iraq's invasion and occupation of Kuwait. Accordingly, the direct causal link between the losses alleged and Iraq's invasion and occupation of Kuwait is sufficiently well established in the fifth instalment claims for loss of real property.

38. All claims were based on the actual costs incurred in repairing the properties or on estimates of such costs.

2. Verification and valuation method

39. The verification and valuation method used by the Panel is the same as that used in the first instalment. (See the First "E4" Report, paras. 92-101.)

3. Evidence submitted

40. Most claimants submitted copies of title deeds or leases to establish their interest in the affected properties. Where leases were submitted, additional checks were performed to ensure that no duplicate claims had been filed by owners of the leased properties. The Panel also referred to the claimants' audited accounts to corroborate the claimants' interest in the affected properties.

41. The Panel's recommendations with respect to real property losses are set out in annex II.

C. Tangible property

42. Tangible property losses are raised by all of the claimants in the fifth instalment aggregating KD 122,949,007 (approximately US$425,429,090). The claims for loss of tangible property relate mainly to loss of vehicles, spare parts, furniture, fixtures, machinery and equipment. Other claims in this category relate to loss of cash.

1. Compensability

43. With regard to the compensability of claims for tangible property losses, the Panel applied the same approach taken in the First "E4" Report. (See the First "E4" Report, paras. 108-109.)

2. Verification and valuation method

44. As noted in the First "E4" Report, the verification and valuation method adopted varies for vehicles, stock, cash, and other tangible property losses. The Panel followed the same verification and valuation

method as used in the First "E4" Report. (See the First "E4" Report, paras. 110-135.)

(a) Tangible property

45. This category of loss relates to furniture, fixtures, machines, equipment, and other tangible assets owned by the claimants prior to Iraq's invasion and occupation of Kuwait.

(b) Loss of vehicles

46. This category of loss relates to the company vehicles used by the claimants in the operation of their business.

(c) Loss of stock

47. This category of loss mainly relates to new and used vehicles for sale and vehicle spare parts and accessories that were kept in the claimants' showrooms, garages and warehouses prior to Iraq's invasion and occupation of Kuwait. Loss of stock claims also include goods in transit, i.e., goods that arrived in Kuwait shortly before the invasion or were diverted from Kuwait and were lost before the claimant could take delivery of the goods from the relevant Kuwaiti air or sea ports.

3. Evidence submitted

(a) Tangible property

48. Most claimants in this instalment submitted audited accounts to establish the existence, ownership and value of the tangible assets damaged or lost as a direct result of Iraq's invasion and occupation of Kuwait. In establishing the fact and cause of loss, claimants relied on assertions in their statement of claim and witness statements. These assertions were generally corroborated by additional documents, such as photographs and independent survey reports. The Panel also relied on the claimants' post-liberation audited accounts. These accounts showed the losses of tangible property as extraordinary losses incurred as a direct result of Iraq's invasion and occupation of Kuwait, and as such provided additional independent verification of the loss.

49. Many claimants sought to value their losses using estimated repair or replacement costs. As in the case of similar real property claims, such claims were found to present a "risk of overstatement" if the claimant did not provide sufficient evidence explaining why it had not repaired or replaced the assets concerned. In some cases the Panel was able to rely on the claimant's post-liberation accounts to determine whether the claimant had subsequently repaired or replaced the affected assets.

50. One claimant, Mohamed Naser Al-Sayer & Sons Est., seeks compensation for the loss of Persian rugs it received from one of its debtors. The

claimant provided an independent estimate of the value of the rugs. During the Mission, the claimant provided its auditors' working papers for the debt indicating that the carpets had been exchanged. The Panel recommends an award for the claim, which has been adjusted for evidentiary shortcomings concerning the valuation of the rugs.

(b) Vehicles

51. Virtually all claimants were able to establish their ownership of lost company vehicles by providing copies of the deregistration certificates issued by the Government of Kuwait. The fact of loss was generally established by the deregistration certificates together with additional substantiating documents such as witness statements describing the circumstances of the loss and post-liberation audited accounts recording the loss of vehicles as an extraordinary item.

52. In some instances, the vehicles used by a claimant were not registered in its name; rather, they were registered in the name of the claimant's owners or employees. In such cases, the Panel verified whether the individual named in the deregistration certificate was related to the claimant. Second, the Panel confirmed that no duplicate claim was made by that individual with the Commission for the same vehicle. If no duplicate claim was made, the Panel would treat the vehicles as belonging to the claimant and review the claim accordingly.

53. Where the claimants did not provide deregistration certificates or where the name of the owner in the deregistration certificate could not be linked to the claimant or its owners, directors or employees, the Panel recommends disallowing the claim, unless the claimant provides a reasonable explanation for not providing deregistration certificates (for example, see para. 60, infra.)

54. The asserted values of the vehicles lost were separately verified by the Panel against vehicle values contained in the Motor Vehicle Valuation Table ("M.V.V. Table"), as defined at paragraph 135 of the First "E4" Report, or, for vehicles not listed in the M.V.V. Table, against other third-party estimates. For example, adjustments based on third-party estimates were applied in part to the claim by Kuwait Bulgarian Trading Co. The Panel tested third-party estimates by examining alternative methods of valuing the claim such as by examining the net book value and depreciated replacement cost.

55. Included in its company vehicles claim, Al-Babtain Trading & Contracting Co. seeks compensation for construction equipment that was not required to have vehicle registration certificates under Kuwaiti law. The claimant did not provide sufficient information regarding these items, including information concerning the age of this equipment. Because the Panel lacked sufficient evidence to evaluate the loss, it recommends disallowing this portion of the company vehicles claim.

(c) Stock

56. For most of the claimants, the existence, ownership and value of stock lost was supported by copies of the claimants' audited accounts, original inventory purchase invoices and "roll-forward" calculations, as defined in paragraph 119 of the First "E4" Report.

57. Deregistration certificates were not relied on to establish the fact of ownership or loss of new vehicles held as stock. Imported vehicles in the possession of automobile dealers were not registered with the Kuwaiti Traffic Department before they were sold to customers. As a result, no deregistration certificates could be issued for these vehicles.

58. Some claimants provided further evidence that their new vehicles were not sold in Kuwait prior to the invasion by providing non-registration certificates from the Kuwaiti Traffic Department. Unlike deregistration certificates, a non-registration certificate is merely an attestation by the Kuwaiti Traffic Department that it has no record of the vehicle bearing the serial number furnished to it by the claimant. The Panel found that claimants were not obliged to provide this certificate as evidence of a new vehicle's loss. Other evidence, such as the claimants' audited accounts, original inventory purchase invoices and roll-forward calculations were deemed sufficient proof of loss.

59. Stock consisting of used vehicles held for sale was valued in the same manner as the stock of new vehicles. As the used vehicles were registered with the Kuwaiti Traffic Department, some claimants provided deregistration certificates for these vehicles. Where such information was provided, the M.V.V. Table was also consulted by the Panel to value the claim.

60. Abdulmohsen Abdulaziz Al-Babtain Co. stated that a number of deregistration certificates for its used vehicles held for sale could not be obtained since, prior to the invasion, these vehicles were neither registered in the name of the claimant, nor in the name of any party related to the claimant. During the Mission, the claimant explained that in some cases used vehicles purchased by the claimant for trade would not be registered in its name because it intended to resell them shortly afterwards. The claimant stated that, while it was the actual owner of the vehicles at the time of the loss, deregistration certificates could not be obtained because the vehicles were not registered in the claimant's name at the time of Iraq's invasion and occupation of Kuwait. The Panel finds that this is a reasonable explanation for not providing deregistration certificates and therefore recommends an award for the claim. This award has been adjusted for evidentiary shortcomings concerning the valuation of the vehicles.

61. As in the first instalment of "E4" claims, successful claims for loss of goods in transit related to goods that arrived in Kuwait shortly before the invasion or were diverted from Kuwait and were lost as a direct result

of Iraq's invasion and occupation of Kuwait before the claimant could take delivery of the goods from the relevant Kuwaiti air or sea ports. These claimants were able to establish the ownership, existence and loss of the goods by providing certificates issued by the Kuwaiti port authorities or shipping agents and proof of payment for these goods.

(d) Cash

62. As in the first instalment of "E4" claims, claimants alleging cash losses were required to substantiate their claims by providing, among other things, contemporaneous records establishing cash held on 2 August 1990, such as previous month-end cash balances, copies of daily bank deposit statements, cash-flow registers and monthly sales ledgers. None of the claimants in the fifth instalment were successful in substantiating their claims for cash losses.

63. The Panel's recommendations with respect to tangible property losses are set out in annex II.

D. Payment or relief to others

64. Six claimants in this instalment asserted claims aggregating KD 204,671 (approximately US$708,204) for payment or relief to others. These claims include payments made to employees to return to Kuwait after the end of Iraq's invasion and occupation and termination benefits paid to non-Kuwaiti employees who lost their jobs as a direct result of Iraq's invasion and occupation of Kuwait.

1. Compensability

65. The Panel followed the same approach taken in the First "E4" Report, (see paras. 153-154), with the addition of the items noted below.

66. With respect to claims relating to termination indemnities, i.e., amounts paid pursuant to an employment contract terminated during Iraq's invasion and occupation of Kuwait, the Panel followed the same approach as that used in the Fourth "E4" Report, (see paras. 61-66).

2. Verification and valuation method

67. The verification and valuation methodology adopted by the Panel for claims relating to payment or relief to others is the same as set forth at paragraphs 155-157 of the First "E4" Report.

68. With respect to claims relating to termination indemnities, the Panel followed the same approach as that in the Fourth "E4" Report (see paras. 61-66.)

3. Evidence submitted

69. Al Qurain Automotive Trading Co. submitted a claim for termination indemnity payments made to several employees whose contracts were terminated as a result of Iraq's invasion and occupation of Kuwait. During the Mission, it was noted that some of these termination indemnities were not paid to the employees. The Panel recommends an award for the claim, which has been adjusted to account for amounts claimed for which the claimant failed to provide proof of payment.

70. The Panel's recommendations with respect to payment or relief to others claims are set out in annex II.

E. Loss of profits

71. Twenty claimants in this instalment asserted claims aggregating KD 138,747,656 (approximately US$480,095,796) for loss of profits.

1. Compensability

72. The four significant legal and factual issues raised by the first instalment claims are all raised by the fifth instalment claims. These issues relate to the impact and assessment of (a) benefits received under the Government of Kuwait's post-liberation debt settlement programme, (b) windfall or exceptional profits earned by claimants in the period immediately following the liberation of Kuwait, (c) the indemnity period for loss of profits claims, and (d) claims for loss of profits selectively based on profitable lines of business. The conclusions reached by the Panel in relation to these issues are set forth in paragraphs 161-193 of the First "E4" Report. The Panel has applied these conclusions, in its consideration and recommendations, for the loss of profits claims in the fifth instalment.

2. Verification and valuation method

73. The fifth instalment claims were verified and valued by the Panel in the same manner as the first instalment claims. (See the First "E4" Report, paras. 194-202.)

3. Evidence submitted

74. As noted in the First "E4" Report, "[a] claim for loss of profits cannot be solely based on revenues lost. It must be matched with corresponding expenses". (See First "E4" Report, para. 197.) Therefore, the Panel evaluates claims for staff salaries and other expenses by reclassifying them to loss of profits.

75. Yusuf Ahmed Alghanim & Sons asserted a claim for KD 98,009,672 for loss of profits. The claimant's method of calculating its loss of profits is different from the methodology consistently applied by the E4 Panels.

The Panel decided that it would apply the same basis of evaluating the loss to this claim as it has to all claims.

76. The Panel's recommendations with respect to loss of profits are set out in annex II.

F. Receivables

77. Nineteen claimants in this instalment asserted claims aggregating KD 96,611,863 (approximately US$334,297,104) for uncollectible receivables or "bad debts". The majority of these claims are for amounts owed by businesses or individuals located in Kuwait prior to Iraq's invasion.

1. Compensability

78. As with the first instalment of "E4" claims, most claimants sought compensation for debts that remained uncollected because debtors had not returned to Kuwait after liberation. The issue raised is whether the uncollected debt had become uncollectible as a direct result of Iraq's invasion and occupation of Kuwait.

79. The Panel reiterates the "E4" Panel's determination on this issue as set out at paragraph 209 of the First "E4" Report, namely that claims for debts that have become uncollectible as a direct result of Iraq's invasion and occupation of Kuwait should demonstrate, by documentary or other appropriate evidence, the nature and amount of debt in question and the circumstances that caused the debt to become uncollectible.

2. Verification and valuation method

80. The fifth instalment claims for uncollectible receivables were verified and valued in the same manner as the first instalment claims. (See the First "E4" Report, paras. 211-215). Few claims satisfied the criteria established in the First "E4" Report. Specifically, the claimants failed to provide evidence to demonstrate that their debtors' inability to pay was a direct result of Iraq's invasion and occupation of Kuwait. This shortcoming was brought to the attention of the claimants through PAAC as described below.

81. On 24 September 1998 PAAC was requested to ask the claimants with bad debt claims (who had not already done so) to provide evidence that the debtors cannot pay their debts to the claimants because they (a) have been officially declared bankrupt, or (b) are otherwise out of business as a direct result of Iraq's invasion and occupation of Kuwait. During the Mission, claimants were also requested to provide official certificates from the concerned Kuwaiti authorities confirming that corporate debtors of the claimants were out of business as a result of Iraq's invasion and occupation of Kuwait.

82. In response, one claimant, Boodai Trading Co., provided a letter from the Kuwaiti Ministry of Commerce and Industry, dated 8 August 1999. The letter listed a number of Kuwaiti companies and stated that these companies were not registered with the Ministry of Commerce and Industry as of the date of the letter. No further explanation was provided by the Ministry about the status of these companies. According to the information in the claim file, the companies listed by the Ministry in this letter were debtors of the claimant. The Panel finds that evidence of non-registration with the Kuwaiti Ministry of Commerce and Industry in 1999 is not sufficient to indicate that the claimant's debtors went out of business as a direct result of Iraq's invasion and occupation of Kuwait.

83. Boodai Trading Co. further provided copies of court orders and judicial proceedings relating to disputes with some of its debtors. These documents concerned disputes relating to debts that were the subject of litigation prior to Iraq's invasion and occupation of Kuwait. Therefore, the Panel recommends disallowing the portion of the claim relating to these debtors.

84. Finally, Boodai Trading Co. provided evidence of unpaid invoices due from the Iraqi Embassy in Kuwait. With regard to debts owed by Iraqi entities, the Panel notes that the Governing Council has approved numerous reports by other category "E" Panels where it was determined that the Commission does not have jurisdiction over a debt or obligation that is based on work performed or services rendered prior to 2 May 1990. (See, e.g., "Report and recommendations made by the Panel of Commissioners concerning the first instalment of 'E2' claims" (S/AC.26/1998/7), para. 90; and "Report and recommendations made by the Panel of Commissioners concerning the fourth instalment of 'E3' claims" (S/AC.26/1999/14), at paras. 21-23.) Therefore, based on the evidence provided by Boodai Trading Co., the Panel recommends allowing only the unpaid portion of the amount owed by the Embassy of Iraq relating to work performed and services rendered by the claimant on or after 2 May 1990.

85. With regard to debts owed to claimants by Iraqi parties, the Panel notes that such debts are compensable in principle even if they fell due for some months following liberation. The Panel reasoned that, notwithstanding that Iraq's unlawful invasion and occupation of Kuwait ended on 2 March 1991, the economic consequences thereof did not end immediately after cessation of the hostilities. The Panel therefore considers losses that occurred thereafter may be compensable as they can still constitute a direct consequence of Iraq's unlawful invasion and occupation of Kuwait. However, the Panel considers that such period shall not run more than five months beyond the end of Iraq's invasion and occupation of Kuwait.

3. Evidence submitted

86. As discussed above, the Panel disallows claims that rely on mere assertions that uncollected debts are ipso facto uncollectible because the

debtors did not return to Kuwait. For claims in this instalment that the Panel recommends disallowing, there is insufficient evidence supporting the assertion that the debtors' inability to pay the debt was a direct result of Iraq's invasion and occupation of Kuwait.

87. Some claimants reduced their claim for bad debts to reflect collections from their debtors that were received after the claims were submitted. Further reductions were made to reflect compensation that was received from the Government of Kuwait under Law No. 43 of 1993 Exempting Kuwaiti Nationals from Private Vehicles Instalments ("Law 43"). Law 43 exempted Kuwaiti citizens, who were debtors and guarantors of certain vehicle loans, from repayment of instalments that fell due after 2 August 1990. Under certain conditions, the Government of Kuwait agreed to pay the lenders the value of the exempted amounts.

88. In response to a letter issued pursuant to article 34 of the Rules (see para. 16, supra), Mohamed Naser Al-Sayer & Sons Est. stated that its original claim for bad debts of KD 17,135,073 (approximately US$59,290,910) had been reduced to KD 1,885,800 (approximately US$6,525,260) due to compensation received from the Government of Kuwait under Law 43 and due to collections made from its customers. Likewise, Al Mulla International Trading & Contracting Co. reduced its original claim for bad debts from KD 20,550,148 (approximately US$71,107,779) to KD 2,265,765 (approximately US$7,840,017) for the same reasons. Although the Panel considered this information when it recommended the awards, the reductions in the amounts asserted are not reflected in annexes I and II to this report.

89. Al-Fajji Trading & Contracting Co. seeks compensation for unpaid amounts under two transportation contracts with the Government of Iraq signed in 1988; one to transport seeds from Kuwait to Basra in southern Iraq, the other to transport seeds from the port of Aqaba in Jordan to Baghdad. Under both contracts, payment to the claimant for each delivery was due in two instalments; 25 per cent after one month of the delivery, and 75 per cent after eighteen months of the delivery. The claimant provided copies of the original contracts with the Government of Iraq and schedules detailing the dates and amounts of deliveries made up to the date of the invasion. The Panel recommends allowing compensation where the goods were provided or services rendered after 2 May 1990 for the instalments that fell due from 2 August 1990 until 2 August 1991 as noted above.

90. Al Mansoor and Al Abdaly Trading & Contracting Co. seeks KD 1,800,000 (approximately US$6,228,374) relating to a letter by the Baghdad Municipality dated 26 October 1980 awarding a sewage construction contract to the claimant. Because of a dispute, the matter was in arbitration before Iraq's invasion and occupation of Kuwait. The claimant contends that Iraq's invasion and occupation interrupted the arbitration proceedings that were likely to favour the claimant. The Panel found that the fact that payment was disputed by the debtor is evidence that refusal of that debtor to pay is unrelated to Iraq's invasion and occupation of Kuwait. In

addition, there was no evidence that the claimant would have prevailed in the arbitration had the invasion not occurred. (See, e.g.,"Report and recommendations made by the Panel of Commissioners concerning the eighth instalment of 'E3' claims" (S/AC.26/1999/15), paras. 67-70.) Therefore, the Panel recommends disallowing the claim.

91. Yusuf Ahmed Alghanim & Sons submitted a claim for receivables, which included, among other items, a claim against Iraqi debtors. In accordance with paragraph 87 above, the Panel recommends allowing a portion of this claim.

92. The Panel's recommendations with respect to uncollectible receivables are set out in annex II.

G. Restart costs

93. Eight claimants in this instalment asserted claims aggregating KD 723,851 (approximately US$2,504,675) for restart costs. The amounts claimed as restart costs have been reviewed using the existing methodology. Thus, the Panel verifies whether the loss is a direct result of Iraq's invasion and occupation of Kuwait and is supported by proof of payment for the items claimed. In this regard, the Panel looks for similar evidence of payment to that required in the case of claims for payment or relief to others. The Panel disallows amounts claimed that are not supported by sufficient documentary evidence to prove that payments were actually made by the claimant. The Panel then verifies whether the cost is an incremental cost to the claimant, i.e., in excess of costs normally incurred by the claimant for this type of expense. Finally, the Panel considers whether the claimant has taken appropriate steps to mitigate its loss.

94. Specifically, the Panel reviewed claims in this category for returning employees to Kuwait. With regard to these claims, the Panel agreed in principle that these losses are the direct result of Iraq's invasion and occupation of Kuwait as it was reasonable that evacuated employees would need to be returned to Kuwait for the claimant to mitigate its losses. When compensating claims for the cost of returning employees to Kuwait, the Panel applied the criteria described in the Fourth "E4" Report, (see para. 88).

95. The claimants were requested through PAAC on 6 January 1999 to provide the information set out in paragraph 88 of the Fourth "E4" Report. Those claims for returning employees that the Panel recommends disallowing failed to provide sufficient information in response to this request.

96. Al Mansoor & Al Abdaly Trading & Contracting Co. seeks reimbursement for the costs associated with tendering bids and salary payments to its employees after liberation. During the Mission, the claimant explained that all of these costs were incurred from 17 August 1991 to 31 December 1993. The claimant provided invoices and payment vouchers to support the

amount claimed. The Panel finds that these expenses are not a direct result of Iraq's invasion and occupation of Kuwait and therefore recommends disallowing the claim.

97. Mohamed Naser Al-Sayer & Sons Est. seeks compensation for the cost of operating an office in Dubai that it rented in January 1991. The office was used to liaise with its suppliers and customers and arrange for the return of its employees after liberation. The claimant provided a schedule listing a variety of expenditures relating to the Dubai office, but it failed to provide sufficient evidence of payment of these items. During the Mission, the claimant promised to provide proof of payment if possible. However, sufficient evidence was not provided. Therefore, the Panel recommends disallowing the claim.

98. Hamad Al Khaled & Brothers Co. asserted a claim for salaries, fuel costs and rental charges, which included costs incurred by the claimant in August 1991. The expenses incurred in August 1991 were not found to be extraordinary expenses directly related to Iraq's invasion and occupation of Kuwait since they would have been incurred by the claimant regardless of the invasion and occupation. Therefore, the Panel recommends disallowing the claim.

99. Boodai Trading Co. seeks compensation for a satellite dish that allows international communication. The claimant purchased it when it restarted operations as telephone service was not yet available. During the Mission, the claimant stated that it did not sell the satellite dish for its salvage value since the equipment was out-of-date. Instead, the claimant continued to use it. As the claimant continued to benefit from its use, the Panel recommends disallowing the claim.

100. The Panel's recommendations with respect to restart costs are set out in annex II.

H. Other losses

101. Claimants seek compensation for losses suffered as a result of the cancellation by the Government of Kuwait of certain Kuwaiti dinar currency notes during Iraq's invasion and occupation of Kuwait (see the Fourth Report, para. 93). The losses represent the amount of cash held by the claimants prior to the invasion that formed part of the subsequently cancelled notes. The Panel followed the same approach taken in the Fourth "E4" Report, (see para. 93).

102. Abbas Ahmed Al-Shawaf & Bros. Co. made a claim for such cancelled Kuwaiti dinar currency notes. During the Mission, the cancelled notes kept by the claimant were inspected. The claimant held the amount in question prior to the invasion to pay the salaries of its employees. In a meeting with the claimant, the notes were manually counted and their serial numbers were matched with the list of serial numbers that were cancelled by the

Government of Kuwait during Iraq's invasion and occupation of Kuwait. Therefore, the Panel recommends allowing this claim.

103. With regard to Yusuf Ahmed Alghanim & Sons's claim for Iraqi dinar losses, the Panel applied the criteria described in the Fourth "E4" Report, (see paras. 95-97).

104. Two related claimants, Abdul Aziz Ahmed Al-Ghannam & Bros. Co. and The Kuwait for Importing Auto Spare Parts Co., seek compensation for a loss categorized as bribes. The statement of claim for the former claimant provides that the those sums were paid "to the Iraqis in order to protect and secure the total inventory of the companies owned by the claimant...". The claimants provided schedules listing the amounts paid and provided a witness statement. The Panel followed the same approach taken in the Fourth "E4" Report (see para. 99) and recommends disallowing the claims.

105. Arabian Motors Group Co. and Bader Al Mulla & Bros. Co. claimed compensation for prepaid expenses, including insurance premiums and rent paid in advance for months during the occupation of Kuwait. Likewise, Abbas Ahmed Al-Shawaf & Bros. Co. claimed compensation for items including the unexpired portion of prepaid maintenance contracts for its air-conditioning system, office and other equipment. The Panel follows the same approach taken in the Fourth "E4" Report, (see para. 103) and recommends disallowing the claims.

106. Maseelah Trading Co. and Bader Al Mulla & Bros. Co. seek compensation for refundable deposits paid to the Government of Kuwait and other parties prior to Iraq's invasion and occupation of Kuwait in relation to the provision of services such as electricity and water. The claimants stated that all the receipts and the computer records evidencing the payment of these deposits were lost or destroyed during the invasion and occupation. Both claimants, which are related, stated that they were "unable to even make an attempt to estimate the quantum and nature" of the deposits. The claimants were required to repay these deposits after liberation. The Panel finds that these deposits were not lost as they are still held by the entity that originally accepted the deposits. The Panel therefore recommends disallowing the claims since the double payment of the deposits by the claimants after liberation was a result of a business decision made by the entities holding the deposits and was not directly caused by Iraq's invasion and occupation of Kuwait.

107. Two additional claimants, Al-Zayani Trading Co. Partnership and Kuwait Automobile & Trading Co., seek compensation for the loss of refundable deposits but they did not provide sufficient information as to the nature of these deposits or whether they had to repay them after liberation. For the lack of sufficient evidence, the Panel recommends disallowing the claims.

108. Al Mansoor & Al Abdaly Trading & Contracting Co. seeks compensation for the depreciation of the claimant's fixed assets from 1 August 1990 to

31 December 1993. The Panel held that such depreciation would have been incurred regardless of Iraq's invasion and occupation of Kuwait, and therefore recommends disallowing the claim.

109. Mohamed Naser Al-Sayer & Sons Est. seeks compensation for the costs associated with collecting its bad debts. The Panel found that a claimant should only be awarded compensation for fees incurred to pursue debtors when:

(a) the bad debts themselves are compensable; and

(b) the claimant can show that it would not have incurred the costs but for Iraq's invasion and occupation of Kuwait.

To fulfil the second element of the test, the claimant should provide proof that it incurred legal fees after liberation beyond the amount historically incurred. However, because the claimant's bad debts were not compensable, the Panel recommends disallowing this claim for Mohamed Naser Al-Sayer & Sons Est. Applying the same criteria, the Panel recommends allowing a portion of Yusuf Ahmed Alghanim & Sons' claim.

110. The Panel's recommendations with respect to other losses are set out in annex II.

VI. OTHER ISSUES

A. Applicable dates for currency exchange rate and interest

111. In relation to determining the applicable dates for the currency exchange rate and interest, the Panel adopts the same approach used in the First "E4" Report. (See the First "E4" Report, paras. 226-233).

B. Claim preparation costs

112. The Panel has been informed by the Executive Secretary of the Commission that the Governing Council intends to resolve the issue of claim preparation costs in the future. Accordingly, the Panel makes no recommendation with respect to compensation for claim preparation costs.

VII. RECOMMENDED AWARDS

113. Based on the foregoing, the awards recommended by the Panel for claimants in the fifth instalment of "E4" claims are set out in annex I to this report. The underlying principles behind the Panel's recommendations on claims in this instalment are summarized in annex II to this report. Because of rounding, the amounts may vary from the amount stated on Form E by 1 KD.

Geneva, 9 December 1999

(Signed) Luiz Olavo Baptista
Chairman

(Signed) Jean Naudet
Commissioner

(Signed) Jianxi Wang
Commissioner

Annex I [ENGLISH ONLY]

Recommended awards for fifth instalment of "E4" claims
Reported by UNSEQ and UNCC claim numbers and claimant name

UNSEQ claim no*	UNCC claim no*	Claimant's Name	Amount claimed (KD)	Net amount claimed (KD)**	Amount recommended (KD)	Amount recommended (US$)
E-00087	4003111	Al-Jazira & Quraini Transportation Co.	4,720,642	4,714,644	2,456,915	8,501,295
E-00088	4003112	Ali & Fouad M. T. Alghanim Automotive Co. W.L.L.	5,057,514	4,430,055	2,943,667	10,183,183
E-00089	4003113	Mohamed Naser Al-Sayer & Sons Est.	33,706,750	33,705,700	6,025,688	20,833,902
E-00111	4003157	Al Mulla International Trading & Contracting Co.	32,368,579	32,368,579	447,207	1,543,940
E-00279	4003414	Arabian Motors Group Co./ Hamad Mohamed Abdulaziz Al Wazzan & Partners W.L.L.	7,129,328	6,388,199	4,375,105	15,137,705
E-00354	4003474	Mohammad Saleh & Reza Yousuf Behbehani Co.	8,554,502	7,953,025	5,087,981	17,602,771
E-00767	4003884	Boodai Trading Company Ltd. W.L.L.	13,788,430	11,414,797	3,039,843	10,518,487
E-00878	4003957	Abbas Ahmed Al-Shawaf & Bros. Co. W.L.L.	6,457,382	6,450,382	2,177,931	7,534,042
E-01295	4004424	Al-Fajji Trading & Contracting Co.	32,133,343	32,127,128	12,591,752	43,570,077
E-01373	4004481	Maseelah Trading Co.	8,052,396	8,052,396	5,451,141	18,857,715
E-01419	4004521	Abdul Aziz Ahmed Al Ghannam & Brothers Company	4,571,195	4,230,038	2,373,788	8,209,424
E-01456	4004577	Al Qurain Automotive Trading Co. (K.S.C.)	5,698,282	5,014,009	3,027,716	10,474,109
E-01494	4004560	Abdulmohsen Abdulaziz Al-Babtain Co.	22,823,796	21,102,589	5,692,577	19,677,484
E-01495	4004561	Al-Babtain Trading & Contracting Co.	9,039,716	7,681,194	1,897,243	6,564,854
E-01544	4004662	Bader Al Mulla & Bros. Co. W.L.L.	9,346,638	9,346,638	4,820,904	16,674,311
E-01555	4004653	The Kuwait for Importing Auto Spare Parts Co.	7,082,531	6,564,441	4,414,805	15,266,533
E-01597	4004705	Abdul Rahman Al-Bisher & Zaid Al-Kazemi	8,980,677	8,119,767	5,400,072	18,668,386
E-01722	4004830	Al Mansoor & Al Abdaly Trading & Contracting Co. W.L.L.	4,058,207	3,679,507	754,695	2,611,402
E-01812	4004916	Yusuf Ahmed Alghanim and Sons W.L.L.	145,007,854	145,007,854	37,370,260	129,244,246
E-01882	4005046	Kuwait Bulgarian Trading Co. W.L.L.	3,082,423	3,079,173	1,414,631	4,894,917
E-01956	4005064	Kuwait Automobile & Trading Co./ Fawzi Al Fawzan & Jasim Abdulrahman Al Zayani Ltd.	3,302,959	2,872,138	1,461,748	5,057,711
E-01957	4005065	Al-Zayani Trading Co. Partnership	3,887,898	3,380,781	1,456,423	5,039,244
E-01995	4005103	Hamad Al Khaled & Brothers Co.	6,033,499	5,048,779	4,242,545	14,679,862
TOTAL			384,884,541	372,731,813	118,924,637	411,345,600

Annex I

Recommended awards for fifth instalment of "E4" claims

Reported by UNSEQ and UNCC claim numbers and claimant name

* The UNSEQ number is the provisional claim number assigned to each claim by PAAC.

** The "Net amount claimed" is the original amount claimed less the amount claimed for claim preparation costs and interest. As set forth in paragraphs 111 and 112 of the report, the Panel has made no recommendation with regard to these items.

[ENGLISH ONLY]

Annex II

Recommended awards for fifth instalment of "E4" claims
Reported by claimant name and category of loss

Claimant's name: Al-Jazira & Quraini Transportation Co.
UNCC claim number: 4003111
UNSEQ number: E-00087

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of real property	46,757	37,406	Claim adjusted for maintenance.
Loss of tangible property	101,794	51,135	Claim reclassified to loss of tangible property, stock and vehicles. Claim adjusted for maintenance and depreciation.
Loss of stock	28,652	10,858	Claim adjusted for stock build-up, obsolescence and evidentiary shortcomings.
Loss of vehicles	2,749,327	2,344,564	Claim adjusted to M.V.V. Table values and for evidentiary shortcomings.
Loss of profits	1,788,114	12,952	Original other loss not categorised claim reclassified to loss of profits. Claim adjusted to reflect historical results.
TOTAL	4,714,644	2,456,915	

Claim preparation costs	5,998	n.a.	Governing Council's determination pending. See paragraph 112 of the report.

Annex II

Recommended awards for fifth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Ali & Fouad M.T. Alghanim Automotive Co. W.L.L.
UNCC claim number: 4003112
UNSEQ number: E-00088

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of real property	610,669	247,891	Claim adjusted for depreciation, maintenance, failure to repair/replace and evidentiary shortcomings.
Loss of tangible property	168,228	120,632	Claim reclassified to loss of tangible property, stock, cash and vehicles. Claim adjusted for depreciation and evidentiary shortcomings.
Loss of stock	2,946,013	2,284,310	Claim adjusted for evidentiary shortcomings.
Loss of cash	22,222	0	Insufficient evidence to substantiate claim.
Loss of vehicles	77,800	60,839	Claim adjusted to M.V.V. Table values.
Loss of profits	458,891	229,995	Claim adjusted to reflect historical results, for windfall profits and evidentiary shortcomings.
Bad debts	146,232	0	Claim adjusted for evidentiary shortcomings.
TOTAL	4,430,055	2,943,667	

Interest	627,459	n.a.	Governing Council's determination pending. See paragraph 111 of the report.

Annex II
Recommended awards for fifth instalment of "E4" claims
Reported by claimant name and category of loss

Claimant's name: Mohamed Naser Al-Sayer & Sons Est.
UNCC claim number: 4003113
UNSEQ number: E-00089

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of real property	2,241,819	946,145	Claim adjusted for maintenance, failure to repair/replace and evidentiary shortcomings.
Loss of tangible property	1,098,815	702,538	Claim reclassified to loss of tangible property, stock, cash and vehicles. Claim adjusted for depreciation. The claim for Persian rugs was adjusted as per paragraph 50 of the report.
Loss of stock	3,982,484	2,581,999	Claim adjusted for evidentiary shortcomings and obsolescence.
Loss of cash	28,436	0	Insufficient evidence to substantiate claim.
Loss of vehicles	547,392	311,621	Claim adjusted to M.V.V. Table values and for evidentiary shortcomings.
Loss of profits	8,226,938	1,483,385	Original other loss not categorised claim reclassified to loss of profits and restart costs. Claim adjusted to reflect historical results and windfall profits.
Bad debts	17,135,073	0	Original contracts claim reclassified to bad debts and other loss not categorised. Claim adjusted as per paragraph 88 of the report and for evidentiary shortcomings.
Restart costs	380,243	0	Claim adjusted as per paragraph 97 of the report.
Other loss not categorised	64,500	0	Claim adjusted as per paragraph 109 of the report.
TOTAL	33,705,700	6,025,688	

Claim preparation costs	1,050	n.a.	Governing Council's determination pending. See paragraph 112 of the report.

Annex II

Recommended awards for fifth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Al Mulla International Trading & Contracting Co.
UNCC claim number: 4003157
UNSEQ number: E-00111

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of tangible property	45,440	45,440	Claim awarded in full.
Loss of cash	2,300	0	Original other loss not categorised claim reclassified to loss of cash, profits and bad debts. Insufficient evidence to substantiate claim.
Loss of profits	11,770,691	401,767	Claim adjusted to reflect historical results and for windfall profits.
Bad debts	20,550,148	0	Claim adjusted as per paragraph 88 of the report and failed for evidentiary shortcomings.
TOTAL	32,368,579	447,207	

Annex II
Recommended awards for fifth instalment of "E4" claims
Reported by claimant name and category of loss

Claimant's name: Arabian Motors Group Co./ Hamad Mohamed Abdulaziz Al Wazzan & Partners W.L.L.
UNCC claim number: 4003414
UNSEQ number: E-00279

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of contract	17,715	0	Claim adjusted as per paragraph 34 of the report.
Loss of real property	133,414	106,731	Claim adjusted for maintenance.
Loss of tangible property	564,336	406,337	Claim reclassified to loss of tangible property, stock and vehicles. Claim adjusted for evidentiary shortcomings, failure to repair/replace and depreciation.
Loss of stock	4,354,853	3,652,008	Claim adjusted for evidentiary shortcomings, obsolescence and stock build-up
Loss of cash	85,127	0	Insufficient evidence to substantiate loss.
Loss of vehicles	102,621	87,228	Claim adjusted for evidentiary shortcomings.
Loss of profits	188,266	97,496	Claim adjusted for windfall profits and evidentiary shortcomings.
Bad debts	831,270	0	Insufficient evidence to substantiate loss.
Restart costs	25,305	25,305	Claim reclassified to restart costs and loss of profits. Claim awarded in full.
Other loss not categorised	85,292	0	Claim reclassified to other loss not categorised, cash, bad debts and contracts. Claim adjusted as per paragraph 105 of the report.
TOTAL	6,388,199	4,375,105	

Claim preparation costs	7,350	n.a.	Governing Council's determination pending. See paragraph 112 of the report.
Interest	733,779	n.a.	Governing Council's determination pending. See paragraph 111 of the report.

Annex II

Recommended awards for fifth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Mohammad Saleh & Reza Yousuf Behbehani Co.
UNCC claim number: 4003474
UNSEQ number: E-00354

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of real property	152,987	101,543	Claim adjusted for maintenance and evidentiary shortcomings.
Loss of tangible property	32,494	19,544	Claim reclassified to loss of tangible property, stock, cash and vehicles. Claim adjusted for depreciation.
Loss of stock	4,718,871	4,714,223	Stock claim awarded in full. Goods in transit claim adjusted for obsolescence.
Loss of cash	40,775	0	Insufficient evidence to substantiate claim.
Loss of vehicles	40,316	0	Insufficient evidence to substantiate claim, i.e., no deregistration certificates.
Loss of profits	795,256	246,671	Claim adjusted to reflect historical results and for windfall profits.
Bad debts	2,165,267	0	Claim adjusted for evidentiary shortcomings.
Restart costs	7,059	6,000	Claim adjusted for evidentiary shortcomings.
TOTAL	7,953,025	5,087,981	

Claim preparation costs	5,000	n.a.	Governing Council's determination pending. See paragraph 112 of the report.
Interest	596,477	n.a.	Governing Council's determination pending. See paragraph 111 of the report.

Annex II

Recommended awards for fifth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Boodai Trading Company Ltd. W.L.L.
UNCC claim number: 4003884
UNSEQ number: E-00767

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of real property	55,032	52,703	Claim adjusted for depreciation.
Loss of tangible property	320,710	253,219	Claim reclassified to loss of real property, tangible property, stock, cash and vehicles. Original other loss not categorised reclassified to loss of tangible property, profits and restart costs. Claim adjusted for depreciation, failure to repair/replace and evidentiary shortcomings.
Loss of stock	4,729,336	2,642,766	Claim adjusted for stock build-up, obsolescence and evidentiary shortcomings.
Loss of cash	29,722	0	Insufficient evidence to substantiate claim.
Loss of vehicles	26,447	23,500	Claim adjusted to reflect M.V.V. Table values. "Non-M.V.V. Table" vehicles adjusted as per paragraph 54 of the report.
Loss of profits	119,197	0	Claim adjusted to reflect historical results.
Bad debts	6,096,687	67,655	Claim adjusted for evidentiary shortcomings as per paragraph 82-84 of the report.
Restart costs	37,666	0	Insufficient evidence to substantiate claim; satellite dish claim adjusted as per paragraph 99 of the report.
TOTAL	11 414,797	3,039,843	

Claim preparation costs	63,414	n.a.	Governing Council's determination pending. See paragraph 112 of the report.
Interest	2,310,219	n.a.	Governing Council's determination pending. See paragraph 111 of the report.

Annex II

Recommended awards for fifth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Abbas Ahmed Al-Shawaf & Bros. Co. W.L.L.
UNCC claim number: 4003957
UNSEQ number: E-00878

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of real property	9,725	7,780	Claim adjusted for maintenance.
Loss of tangible property	1,126,981	399,965	Claim reclassified to loss of tangible property, stock, vehicles and other loss not categorised. Claim adjusted for maintenance, evidentiary shortcomings and to reflect recognised foreign exchange rates.
Loss of stock	1,139,977	999,445	Claim adjusted for stock build-up, obsolescence and evidentiary shortcomings.
Loss of vehicles	464,547	411,042	Claim adjusted to reflect M.V.V. Table values. "Non-M.V.V. Table" vehicles adjusted as per paragraph 54 of the report.
Loss of profits	205,748	171,873	Original claim for payment or relief to others reclassified to loss of profits. Claim adjusted for evidentiary shortcomings.
Bad debts	3,303,659	0	Original contracts claim reclassified to bad debts. Insufficient evidence to substantiate claim.
Restart costs	96,414	96,414	Claim awarded in full.
Other loss not categorised	103,331	91,412	Claim reclassified to other loss not categorised, loss of stock, profits, bad debts and restart costs. Original claim for business transaction reclassified to other loss not categorised. Kuwaiti dinar claim awarded in full as per paragraph 102 of the report. Pre-paid expenses claim adjusted as per paragraph 105 of the report.
TOTAL	6,450,382	2,177,931	

Claim preparation costs	7,000	n.a.	Governing Council's determination pending. See paragraph 112 of the report.

Annex II

Recommended awards for fifth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Al-Fajji Trading & Contracting Co.
UNCC claim number: 4004424
UNSEQ number: E-01295

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of tangible property	12,995,932	8,536,534	Claim reclassified to loss of tangible property and vehicles. Claim adjusted for depreciation and evidentiary shortcomings.
Loss of vehicles	63,785	36,442	Claim adjusted to reflect M.V.V. Table values.
Loss of profits	3,736,035	3,736,035	Claim awarded in full.
Bad debts	15,331,376	282,741	Original contracts claim reclassified to bad debts. Claim adjusted as per paragraph 89 of the report.
TOTAL	32,127,128	12,591,752	

Claim preparation costs	6,215	n.a.	Governing Council's determination pending. See paragraph 112 of the report.

Annex II

Recommended awards for fifth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Maseelah Trading Co.
UNCC claim number: 4004481
UNSEQ number: E-01373

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of tangible property	104,305	74,741	Claim reclassified to loss of tangible property, stock and vehicles. Claim adjusted for depreciation and failure to repair/replace.
Loss of stock	5,390,156	4,839,982	Claim adjusted for obsolescence and evidentiary shortcomings.
Loss of cash	4,716	0	Insufficient evidence to substantiate claim.
Loss of vehicles	6,869	6,869	Claim awarded in full.
Loss of profits	1,716,000	502,474	Claim adjusted to reflect historical results and for windfall profits.
Bad debts	807,903	27,075	Claim adjusted for evidentiary shortcomings.
Other loss not categorised	22,447	0	Claim adjusted as per paragraph 106 of the report.
TOTAL	8,052,396	5,451,141	

Annex II
Recommended awards for fifth instalment of "E4" claims
Reported by claimant name and category of loss

Claimant's name: Abdul Aziz Ahmed Al Ghannam & Brothers Company
UNCC claim number: 4004521
UNSEQ number: E-01419

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of real property	166,529	134,384	Claim reclassified to loss of real property, tangible property and profits. Claim adjusted for maintenance and depreciation.
Loss of tangible property	211,488	124,871	Claim reclassified to loss of tangible property, real property, stock and vehicles. Claim adjusted for depreciation, maintenance and evidentiary shortcomings.
Loss of stock	2,319,336	1,702,373	Claim adjusted for stock build-up, evidentiary shortcomings and obsolescence.
Loss of vehicles	3,700	3,265	Claim adjusted to reflect M.V.V. Table values.
Payment or relief to others	2,894	2,894	Claim reclassified to payment or relief to others and loss of profits. Claim awarded in full.
Loss of profits	409,212	400,065	Claim adjusted for evidentiary shortcomings.
Bad debts	1,024,516	0	Insufficient evidence to substantiate claim.
Other loss not categorised	92,363	5,936	Claim reclassified to other loss not categorised, stock and bad debts. Claim for cost of returning goods in transit to sender adjusted for evidentiary shortcomings. Claim for bribes adjusted as per paragraph 104 of the report.
TOTAL	4,230,038	2,373,788	

Claim preparation costs	10,000	n.a.	Governing Council's determination pending. See paragraph 112 of the report.
Interest	331,157	n.a.	Governing Council's determination pending. See paragraph 111 of the report.

Annex II

Recommended awards for fifth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Al Qurain Automotive Trading Co. (K.S.C.)
UNCC claim number: 4004577
UNSEQ number: E-01456

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of real property	89,195	59,778	Claim adjusted for depreciation and maintenance.
Loss of tangible property	145,667	98,087	Claim reclassified to loss of tangible property, stock, cash and vehicles. Claim for rental cars adjusted for maintenance, betterment and evidentiary shortcomings. Computer system claim awarded in full.
Loss of stock	2,931,068	2,349,604	Claim adjusted for stock build-up and evidentiary shortcomings.
Loss of cash	12,229	0	Insufficient evidence to substantiate claim.
Loss of vehicles	292,916	291,987	Claim adjusted to reflect M.V.V. Table values.
Payment or relief to others	19,830	7,369	Claim reclassified to payment or relief to others and loss of profits. Claim adjusted as per paragraph 69 of the report.
Loss of profits	1,523,104	220,891	Claim adjusted to reflect historical results and for windfall profits.
TOTAL	5,014,009	3,027,716	

Claim preparation costs	24,419	n.a.	Governing Council's determination pending. See paragraph 112 of the report.
Interest	659,854	n.a.	Original other loss not categorised reclassified to interest. Governing Council's determination pending. See paragraph 111 of the report.

Annex II
Recommended awards for fifth instalment of "E4" claims
Reported by claimant name and category of loss

Claimant's name: Abdulmohsen Abdulaziz Al-Babtain Co.
UNCC claim number: 4004560
UNSEQ number: E-01494

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of real property	641,342	505,202	Claim adjusted for failure to repair/replace and evidentiary shortcomings.
Loss of tangible property	979,821	304,103	Claim reclassified to loss of tangible property, stock and vehicles. Tangible property claim adjusted for depreciation, failure to repair/replace and evidentiary shortcomings.
Loss of stock	3,798,085	2,848,983	Claim adjusted for evidentiary shortcomings and for obsolescence on the stocks of forklifts, cranes and spare parts. Vehicle stock reviewed in part as per paragraph 60 of the report.
Loss of vehicles	390,257	44,132	Claim adjusted for evidentiary shortcomings and to reflect M.V.V. Table values.
Payment or relief to others	116,384	87,009	Other loss not classified claim reclassified to payment or relief to others, loss of profits and restart costs. Claim adjusted for evidentiary shortcomings.
Loss of profits	5,183,238	1,829,484	Claim adjusted to reflect historical results and for windfall profits.
Bad debts	9,900,576	0	Insufficient evidence to substantiate loss.
Restart costs	92,886	73,664	Claim adjusted for evidentiary shortcomings.
TOTAL	21,102,589	5,692,577	

Claim preparation costs	33,000	n.a.	Governing Council's determination pending. See paragraph 112 of the report.
Interest	1,688,207	n.a.	Governing Council's determination pending. See paragraph 111 of the report.

Annex II

Recommended awards for fifth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Al-Babtain Trading & Contracting Co.
UNCC claim number: 4004561
UNSEQ number: E-01495

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of real property	153,340	153,340	Claim awarded in full.
Loss of tangible property	895,617	403,603	Claim reclassified to loss of tangible property, stock and vehicles. Claim adjusted for depreciation.
Loss of stock	1,047,555	734,727	Claim adjusted for evidentiary shortcomings and obsolescence.
Loss of vehicles	2,099,448	605,573	Claim adjusted to reflect M.V.V. Table values and for evidentiary shortcomings, including the comment in paragraph 55 of the report. "Non-M.V.V. Table" vehicles adjusted as per paragraph 54 of the report.
Bad debts	3,485,234	0	Insufficient evidence to substantiate claim.
TOTAL	7,681,194	1,897,243	

Claim preparation costs	5,000	n.a.	Governing Council's determination pending. See paragraph 112 of the report.
Interest	1,353,522	n.a.	Governing Council's determination pending. See paragraph 111 of the report.

Annex II
Recommended awards for fifth instalment of "E4" claims
Reported by claimant name and category of loss

Claimant's name: Bader Al Mulla & Bros. Co. W.L.L.
UNCC claim number: 4004662
UNSEQ number: E-01544

Category of loss	Amount Asserted (KD)	Amount recommended (KD)	Comments
Loss of contract	348,503	219,642	Claim reclassified to loss of contract and bad debts. Claim adjusted for evidentiary shortcomings.
Loss of real property	2,384,865	1,525,349	Claim adjusted for maintenance, depreciation, failure to repair/replace and evidentiary shortcomings.
Loss of tangible property	374,232	240,853	Claim reclassified to loss of tangible property, stock, cash and vehicles. Claim adjusted for depreciation and evidentiary shortcomings.
Loss of stock	2,712,250	1,971,805	Stock claim adjusted for obsolescence and evidentiary shortcomings. Insufficient evidence to support goods in transit claim.
Loss of cash	26,518	0	Insufficient evidence to support claim.
Loss of vehicles	55,275	55,275	Claim awarded in full.
Loss of profits	1,342,000	807,980	Claim adjusted to reflect historical results and for windfall profits.
Bad debts	1,892,637	0	Insufficient evidence to support claim.
Other loss not categorised	210,358	0	Pre-paid expenses claim adjusted as per paragraph 105 of the report. Deposits claim adjusted as per paragraph 106 of the report.
TOTAL	9,346,638	4,820,904	

Annex II

Recommended awards for fifth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: The Kuwait for Importing Auto Spare Parts Company
UNCC claim number: 4004653
UNSEQ number: E-01555

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of tangible property	273,708	127,858	Claim reclassified to loss of tangible property, stock and vehicles. Claim adjusted for depreciation and evidentiary shortcomings.
Loss of stock	4,104,349	3,397,713	Claim adjusted for obsolescence, stock build-up and evidentiary shortcomings.
Loss of vehicle	600	417	Claim adjusted to M.V.V. Table value.
Payment or relief to others	10,556	10,556	Claim reclassified to payment or relief to others and loss of profits. Claim awarded in full.
Loss of profits	953,650	878,261	Claim adjusted for evidentiary shortcomings.
Bad debts	962,901	0	Insufficient evidence to substantiate claim.
Other loss not categorised	258,677	0	Claim adjusted as per paragraph 104 of the report.
TOTAL	6,564,441	4,414,805	

Claim preparation costs	5,000	n.a.	Governing Council's determination pending. See paragraph 112 of the report.
Interest	513,090	n.a.	Governing Council's determination pending. See paragraph 111 of the report.

Annex II

Recommended awards for fifth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Abdul Rahman Al-Bisher & Zaid Al-Kazemi
UNCC claim number: 4004705
UNSEQ number: E-01597

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of real property	80,610	49,802	Claim adjusted for evidentiary shortcomings and maintenance.
Loss of tangible property	553,462	537,417	Claim reclassified to loss of tangible property, stock, cash and vehicles. Restart costs reclassified to loss of tangible property. Claim adjusted for depreciation and maintenance.
Loss of stock	5,172,703	2,724,045	Claim adjusted for stock build-up, obsolescence, and evidentiary shortcomings.
Loss of cash	27,549	0	Insufficient evidence to substantiate claim.
Loss of vehicles	191,910	89,710	Claim adjusted for evidentiary shortcomings and to reflect M.V.V. Table values.
Payment or relief to others	49,638	43,896	Claim reclassified to payment or relief to others and loss of profits. Claim adjusted for evidentiary shortcomings.
Loss of profits	2,043,895	1,955,202	Claim for income-producing property reclassified to loss of profits. Claim adjusted for evidentiary shortcomings.
TOTAL	8,119,767	5,400,072	

Claim preparation costs	15,153	n.a.	Governing Council's determination pending. See paragraph 112 of the report.
Interest	845,757	n.a.	Governing Council's determination pending. See paragraph 111 of the report.

Annex II

Recommended awards for fifth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Al Mansoor & Al Abdaly Trading & Contracting Co. W.L.L.
UNCC claim number: 4004830
UNSEQ number: E-01722

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of contract	502,482	0	Insufficient evidence to substantiate claim.
Loss of real property	12,014	6,007	Claim adjusted for maintenance and depreciation.
Loss of tangible property	72,748	51,098	Claim reclassified to loss of tangible property, stock and vehicles. Claim adjusted for maintenance and failure to repair/replace.
Loss of stock	411,537	201,267	Claim adjusted for stock build-up, obsolescence and evidentiary shortcomings.
Loss of vehicles	756,194	496,323	Claim adjusted to reflect M.V.V. Table values. "Non-M.V.V. Table" vehicles adjusted as per paragraph 54 of the report.
Bad debts	1,831,577	0	Claim adjusted as per paragraph 90 of the report.
Restart costs	72,284	0	Claim adjusted as per paragraph 96 of the report.
Other loss not categorised	20,671	0	Claim adjusted as per paragraph 108 of the report.
TOTAL	3,679,507	754,695	

Claim preparation costs	10,750	n.a.	Governing Council's determination pending. See paragraph 112 of the report.
Interest	367,950	n.a.	Governing Council's determination pending. See paragraph 111 of the report.

Annex II
Recommended awards for fifth instalment of "E4" claims
Reported by claimant name and category of loss

Claimant's name: Yusuf Ahmed Alghanim and Sons W.L.L.
UNCC claim number: 4004916
UNSEQ number: E-01812

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of contract	273,881	40,833	Claim reclassified to loss of contract, profits and bad debts. Claim adjusted for evidentiary shortcomings.
Loss of real property	2,108,142	1,441,013	Claim reclassified to loss of real property, tangible property, vehicles and profits. Claim adjusted for maintenance, failure to repair/replace and evidentiary shortcomings.
Loss of tangible property	2,714,851	1,487,892	Claim reclassified to loss of tangible property, stock, vehicles and other loss not categorised. Claim adjusted for depreciation and evidentiary shortcomings.
Loss of stock	24,639,181	21,683,338	Claim adjusted for obsolescence and evidentiary shortcomings.
Loss of vehicles	6,076,108	5,511,994	Claim adjusted to reflect M.V.V. Table values and for evidentiary shortcomings.
Loss of profits	98,009,672	5,905,733	Claim adjusted to reflect historical results and to restrict the period of loss to 12 months as per paragraph 75 of the report.
Bad debts	9,302,118	377,833	Original business transaction claim reclassified to bad debts and other loss not categorised. Claim adjusted for evidentiary shortcomings and as per paragraph 91 of the report.
Other loss not categorised	1,883,901	921,624	Claim for Iraqi dinar adjusted as per paragraph 103 of the report and claim for collection costs adjusted as per paragraph 109 of the report. Claim adjusted for evidentiary shortcomings.
TOTAL	145,007,854	37,370,260	

Annex II

Recommended awards for fifth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Kuwait Bulgarian Trading Co. W.L.L.
UNCC claim number: 4005046
UNSEQ number: E-01882

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of tangible property	3,023	2,198	Claim reclassified to loss of tangible property and vehicles. Claim adjusted for depreciation and failure to repair/replace.
Loss of vehicles	3,076,150	1,412,433	Claim adjusted to reflect M.V.V. Table values. "Non-M.V.V. Table" vehicles adjusted as stated in paragraph 54 of the report.
TOTAL	3,079,173	1,414,631	

Claim preparation costs	3,250	n.a.	Governing Council's determination pending. See paragraph 112 of the report.

Annex II

Recommended awards for fifth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Kuwait Automobile & Trading Co./ Fawzi Al Fawzan & Jasim Abdulrahman Al Zayani Ltd.
UNCC claim number: 4005064
UNSEQ number: E-01956

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of real property	710,981	355,490	Claim adjusted for depreciation.
Loss of tangible property	30,650	23,627	Claim reclassified to loss of tangible property, stock, vehicles, bad debts, real property and other loss not categorised. Claim adjusted for depreciation.
Loss of stock	1,305,521	957,578	Claim adjusted for obsolescence and evidentiary shortcomings.
Loss of vehicles	40,657	34,558	Claim adjusted for evidentiary shortcomings.
Loss of profits	90,495	90,495	Claim awarded in full.
Bad debts	686,901	0	Insufficient evidence to substantiate claim.
Other loss not categorised	6,933	0	Claim adjusted as per paragraph 107 of the report.
TOTAL	2,872,138	1,461,748	

Interest	430,821	n.a.	Governing Council's determination pending. See paragraph 111 of the report.

Annex II

Recommended awards for fifth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Al-Zayani Trading Co. Partnership
UNCC claim number: 4005065
UNSEQ number: E-01957

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of tangible property	102,347	77,980	Claim reclassified to loss of tangible property, stock, vehicles, bad debts and other loss not categorised. Claim adjusted for depreciation and failure to repair/replace.
Loss of stock	1,971,926	1,270,725	Claim adjusted for obsolescence and evidentiary shortcomings.
Loss of vehicles	1,845	1,568	Claim adjusted for evidentiary shortcomings.
Loss of profits	141,534	106,150	Claim adjusted for windfall profits.
Bad debts	1,157,019	0	Insufficient evidence to substantiate claim.
Other loss not categorised	6,110	0	Claim adjusted as per paragraph 107 of the report.
TOTAL	3,380,781	1,456,423	

Interest	507,117	n.a.	Governing Council's determination pending. See paragraph 111 of the report.

Annex II

Recommended awards for fifth instalment of "E4" claims

Reported by claimant name and category of loss

Claimant's name: Hamad Al Khaled & Brothers Co.
UNCC claim number: 4005103
UNSEQ number: E-01995

Category of loss	Amount asserted (KD)	Amount recommended (KD)	Comments
Loss of tangible property	481,768	197,823	Claim reclassified to loss of tangible property, stock, vehicles and bad debts. Claim adjusted for depreciation and evidentiary shortcomings.
Loss of stock	268,653	136,884	Claim adjusted for stock build-up and evidentiary shortcomings.
Loss of vehicles	4,234,326	3,881,895	Claim adjusted to reflect M.V.V. Table values.
Payment or relief to others	5,369	5,369	Claim awarded in full.
Loss of profits	45,720	20,574	Claim adjusted for evidentiary shortcomings.
Bad debts	769	0	Insufficient evidence to substantiate claim.
Restart costs	11,994	0	Claim adjusted as per paragraph 98 of the report.
Other loss not categorised	180	0	Claim reclassified to other loss not categorised, tangible property, payment or relief to others, profits and restart costs. Insufficient evidence to substantiate claim.
TOTAL	5,048,779	4,242,545	

Claim preparation costs	14,185	n.a.	Governing Council's determination pending. See paragraph 112 of the report.
Interest	970,535	n.a.	Governing Council's determination pending. See paragraph 111 of the report.